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Attorneys for Plaintiff: JAMES RUTHERFORD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

JAMES RUTHERFORD, an
individual,

Plaintiff,

v.

JOYCE UNLIMITED, INC., a
California corporation; TALAT
RADWAN AND NATASHA
RADWAN, Co-Trustees of the
CANYON SPRINGS
INVESTMENT TRUST; and DOES
1-10, inclusive,

Defendants.

Case No. 5-18-cv-02656-ODW-SHK
Second Amended Complaint For
Damages And Injunctive Relief For:

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
seq. as amended by the ADA
Amendments Act of 2008 (P.L. 110-
325).**
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, JAMES RUTHERFORD (“Plaintiff”), complains of Defendants
JOYCE UNLIMITED, INC., a California corporation; TALAT RADWAN AND
NATASHA RADWAN, Co-Trustees of the CANYON SPRINGS INVESTMENT

1 TRUST; and DOES 1-10 (“Defendants”) and alleges as follows:

2 **PARTIES:**

3 1. Plaintiff is an adult California resident. Plaintiff is substantially limited
 4 in performing one or more major life activities, including but not limited to:
 5 walking, standing, ambulating, sitting, in addition to twisting, turning, and grasping
 6 objects. As a result of these disabilities, Plaintiff relies upon mobility devices,
 7 including at times a wheelchair, to ambulate. With such disabilities, Plaintiff
 8 qualifies as a member of a protected class under the Americans with Disabilities Act,
 9 42 U.S.C. §12102(2) as amended by the ADA Amendments Act of 2008 (P.L. 110-
 10 325) (“ADA”) and the regulations implementing the ADA set forth at 28 C.F.R. §§
 11 36.101 et seq. At the time of Plaintiff’s visits to Defendant’s facility and prior to
 12 instituting this action, Plaintiff suffered from a “qualified disability” under the ADA,
 13 including those set forth in this paragraph. Plaintiff is also the holder of a Disabled
 14 Person Parking Placard.
 15

16 2. Plaintiff brings this action acting as a “private attorney general” as
 17 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize
 18 enforcement of the ADA without the American tax payer(s) bearing the financial tax
 19 burden for such action.
 20

21 3. Defendant TALAT RADWAN AND NATASHA RADWAN, Co-
 22 Trustees of the CANYON SPRINGS INVESTMENT TRUST, owned the property
 23 located at 12125 Day Street, Moreno Valley, CA 92557 (“Property”) on August of
 24 2018.

25 4. Defendant TALAT RADWAN AND NATASHA RADWAN, Co-
 26 Trustees of the CANYON SPRINGS INVESTMENT TRUST, owns the Property
 27 currently.
 28

5. JOYCE UNLIMITED, INC., a California corporation, owned, operated

1 and controlled the business of JJ's Market and Liquor ("Business") on August of
2 2018.

3 6. JOYCE UNLIMITED, INC., a California corporation, owns, operates
4 and controls the Business currently.

5 7. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the Property and Business, or their relative
7 responsibilities in causing the access violations herein complained of, and alleges a
8 joint venture and common enterprise by all such Defendants. Plaintiff is informed
9 and believes that each of the Defendants herein, including Does 1 through 10,
10 inclusive, is responsible in some capacity for the events herein alleged, or is a
11 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
12 when the true names, capacities, connections, and responsibilities of the Defendants
13 and Does 1 through 10, inclusive, are ascertained.

14 **JURISDICTION AND VENUE**

15 8. This Court has subject matter jurisdiction over this action pursuant
16 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the ADA.

17 9. This court has supplemental jurisdiction over Plaintiff's non-federal
18 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's Unruh Civil Rights Act,
19 California Civil Code § 51 *et seq.*, ("UCRA") claims are so related to Plaintiff's
20 federal ADA claims in that they have the same nucleus of operative facts and
21 arising out of the same transactions, they form part of the same case or controversy
22 under Article III of the United States Constitution.

23 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
24 Property which is the subject of this action is located in this district and because
25 Plaintiff's causes of action arose in this district.

26 **FACTUAL ALLEGATIONS**

27 11. Plaintiff went to the Business on or about August of 2018 for the dual
28 purpose of purchasing liquor and to confirm that this public place of accommodation

1 is accessible to persons with disabilities within the meaning federal and state law.

2 12. The Business, including the Property, is a facility open to the public, a
3 place of public accommodation, and a business establishment.

4 13. Parking spaces are some of the facilities, privileges and advantages
5 reserved by Defendants to persons patronizing the Business and Property.

6 14. Unfortunately, although parking spaces were some of the facilities
7 reserved for patrons, there were barriers for persons with disabilities that cause the
8 named facilities to fail as to compliance with the Americans with Disability Act
9 Accessibility Guidelines (“ADAAG”) on or around August of 2018, or at any time
10 thereafter up to and including, the date of the filing of this Second Amended
11 Complaint.

12 15. At that time, instead of having architectural barrier free facilities for
13 patrons with disabilities, Plaintiff experienced the following at the Business and
14 Property: the accessible parking spaces are not located on the shortest accessible
15 route to the entrance in violation of Section 208.3.1 (parking spaces complying with
16 502 that serve a particular building or facility shall be located on the shortest
17 accessible route from parking to an entrance complying with 206.4; the accessible
18 parking spaces are clustered together at the far end of the building (where parking
19 serves more than one accessible entrance, parking spaces complying with 502 shall
20 be dispersed and located on the shortest accessible route to the accessible entrances);
21 the curb ramp at the accessible parking spaces projects into the access aisle in
22 violation of Section 406.5 (curb ramps and the flared sides of curb ramps shall be
23 located so that they do not project into vehicular traffic lanes, parking spaces, or
24 parking access aisles); the access aisle at the accessible parking spaces is ramped up
25 to connect the street level to the curb creating slopes and cross slopes exceeding 2%.
26 (parking spaces and access aisles serving them shall comply with 302, access aisles
27 shall be at the same level as the parking spaces they serve, and changes in level are
28 not permitted); and there is no accessible parking space signage that complies with

1 502.8.2.

2 16. Subject to the reservation of rights to assert further violations of law
3 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
4 violations which affect him personally.

5 17. Plaintiff is informed and believes and thereon alleges that, currently,
6 there are no compliant, accessible Business facilities designed, reserved and
7 available to persons with disabilities at the Business in addition to that alleged *supra*.

8 18. Plaintiff is informed and believes and thereon alleges that Defendants
9 had no policy or plan in place to make sure that the parking spaces were compliant
10 for persons with disabilities and remained compliant prior to August of 2018.

11 19. Plaintiff is informed and believes and thereon alleges Defendants have
12 no policy or plan in place to make sure that the complaints of violations alleged
13 above are available to persons with disabilities and remain compliant currently.

14 20. Plaintiff personally encountered the above alleged barriers when at the
15 Business and Property. The presence of these barriers related to Plaintiff's disability,
16 denies Plaintiff his right to enjoy accessible conditions at public place of
17 accommodation, and invades legally cognizable interests created under the ADA.

18 21. The conditions identified *supra* in paragraph 15 are necessarily related
19 to Plaintiff's legally recognized disability in that Plaintiff is substantially limited in
20 the major life activities of walking, standing, ambulating, sitting, in addition to
21 twisting, turning, and grasping objects and is the holder of a disabled parking
22 placard and because the enumerated conditions relate to the use of the accessible
23 parking, relate to the slope and condition of the accessible parking and accessible
24 path to the accessible entrance, and because they relate to the safety of the accessible
25 path to the accessible entrance.

26 22. As an individual with a mobility disability who at times relies upon a
27 mobility device, Plaintiff has a keen interest in whether public accommodations have
28

1 architectural barriers that impede full accessibility to those accommodations by
2 individuals with mobility impairments.

3 23. Plaintiff is being deterred from patronizing the Business and its
4 accommodations on particular occasions, but intends to return to the Business for the
5 dual purpose of availing himself of the goods and services offered to the public and
6 to ensure that the Business ceases evading its responsibilities under federal and state
7 law.

8 24. As a result of the difficulty Plaintiff experienced and because of the
9 inaccessible condition of the facilities of the Business, Plaintiff was denied full and
10 equal access to the Business and Property.

11 25. Upon being informed that the public place of accommodation has
12 become fully and equally accessible, Plaintiff will return within 45 days as a “tester”
13 for the purpose of confirming their accessibility. *Civil Rights Educ. and*
14 *Enforcement Center v. Hospitality Props. Trust*, 867 F.3d 1093, 1096 (9th Cir.
15 2017).

16 26. The Defendants have failed to maintain in working and useable
17 conditions those features required to provide ready access to persons with
18 disabilities.

19 27. The violations identified above are easily removed without much
20 difficulty or expense. They are the types of barriers identified by the Department of
21 Justice as presumably readily achievable to remove and, in fact, these barriers are
22 readily achievable to remove. Moreover, there are numerous alternative
23 accommodations that could be made to provide a greater level of access if complete
24 removal were not achievable.

25 28. Given the obvious and blatant violation alleged hereinabove, Plaintiff
26 alleges, on information and belief, that there are other violations and barriers in the
27 site that relate to his disabilities. Plaintiff will amend the Second Amended
28 Complaint, to provide proper notice regarding the scope of this lawsuit, once he

1 conducts a site inspection. However, the Defendants are on notice that Plaintiff
 2 seeks to have all barriers related to their disabilities remedied. See *Doran v. 7-11*,
 3 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at
 4 a site, he can sue to have all barriers that relate to his disability removed regardless
 5 of whether he personally encountered them).

6 29. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 7 alleges, on information and belief, that the failure to remove these barriers was
 8 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
 9 Defendants exercised control and dominion over the conditions at this location, and
 10 therefore, (3) the lack of accessible facilities was not an accident because had the
 11 Defendants intended any other configuration, they had the means and ability to make
 12 the change.

13 30. Without injunctive relief, Plaintiff will continue to be unable to fully
 14 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

17 **42 U.S.C. § 12181 et seq. et seq. as amended by the ADA Amendments Act of**

18 **2008 (P.L. 110-325)**

19 31. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 20 above and each and every other paragraph in this Second Amended Complaint
 21 necessary or helpful to state this cause of action as though fully set forth herein.

22 32. Under the ADA, it is an act of discrimination to fail to ensure that the
 23 privileges, advantages, accommodations, facilities, goods, and services of any place
 24 of public accommodation are offered on a full and equal basis by anyone who owns,
 25 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

26 Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,
 28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
8 Appendix "D".

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs, or to ensure that, to
13 the maximum extent feasible, the path of travel to the altered area
14 and the bathrooms, telephones, and drinking fountains serving
15 the area, are readily accessible to and usable by individuals with
16 disabilities. 42 U.S.C. § 12183(a)(2).

17 33. Any business that provides parking spaces must provide accessible
18 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
19 Standards, parking spaces and access aisles must be level with surface slopes not
20 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010
21 Standards, access aisles shall be at the same level as the parking spaces they serve.
22 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are
23 required to be nearly level in all directions to provide a surface for wheelchair
24 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built
25 up curb ramps are not permitted to project into access aisles and parking spaces. Id.
26 No more than a 1:48 slope is permitted. Standards § 502.4.

27 34. Here, the failure to ensure that accessible facilities were available and
28 ready to be used by Plaintiff is a violation of law.

35. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

36. Given its location and options, Plaintiff will continue to desire to patronize the Business but he has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seek injunctive relief to remove the barriers.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL

CODE § 51 *et seq.*

37. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Second Amended Complaint necessary or helpful to state this cause of action as though fully set forth herein.

38. California Civil Code § 51 *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, Civil Code § 51 *et seq.*

39. Because Defendants violate Plaintiff's rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).) These violations are ongoing.

40. Defendants' actions constitute intentional discrimination against Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to Plaintiff as above alleged. Despite this knowledge, Defendants maintain the Property and Business in an inaccessible form.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as

1 **follows:**

2 1. A preliminary and permanent injunction enjoining Defendants from
3 further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code §
4 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note:**
5 **Plaintiff is not invoking section 55 of the California Civil Code and is not**
6 **seeking injunctive relief under the Disable Persons Act at all.**

7 2. An award of actual damages and statutory damages of not less than
8 \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for
9 each time he visits an establishment that contains architectural barriers that deny the
10 Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.*
11 (2005) 431 F.Supp.2d 1088, 1091.)

12 3. An additional award of \$4,000.00 as deterrence damages for each
13 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.
14 LEXIS 150740 (USDC Cal, E.D. 2016);

15 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,
16 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby respectfully request a trial by jury on all appropriate issues
19 raised in this Second Amended Complaint.

20
21 Dated: June 25, 2019

MANNING LAW, APC

22
23 By: /s/ Joseph R. Manning Jr., Esq. _____

24 Joseph R. Manning Jr., Esq.

25 Michael J. Manning, Esq.

26 Craig G. Côté, Esq.

27 Attorneys for Plaintiff

**PROOF OF SERVICE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the cause. My business address is 4667 MacArthur Blvd., Suite 150, Newport Beach, CA 92660.

On 6/25/19 I served the true copies of the foregoing document described as:

**Second Amended Complaint For Damages And Injunctive
Relief For**

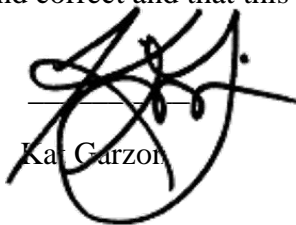
on the interested parties in this action, addressed as follows, **Served by Mail via Postal Service:**

TALAT RADWAN AND NATASHA RADWAN, Co-Trustees of the CANYON SPRINGS
INVESTMENT TRUST
3824 University Avenue #316
Riverside, CA 92501

☒ By United States Postal Service: The documents were mailed as set forth above by U.S. Mail and placed in sealed, addressed envelopes on the above date and deposited into a U.S. Postal Service Mail box on the date set forth above, with postage thereon fully prepaid at Newport Beach, California.

☐ BY Electronic Mail. I caused each such document to be transmitted electronically to the parties at the e-mail address indicated. To the best of my knowledge, the transmission was reported as complete and no error was reported that it was not completed.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this affidavit was executed on June 25, 2019.



Kar Garzon